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Hillsboro, Oregon 97124

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**Fax**

Page 1 of 30

Urgent

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Date: 5-Sep-06

**To:**  
Examiner: Ma, Johnny  
USPTO

**Fax:**  
(571)-273-8300

**Art Unit:**  
2614

**From:**  
Justin B. Scout  
Intel Corporation

**Fax:**  
503-264-1729

**M/S:**  
JF3-147

**Subject:** Application No.: 09/580,305    Docket #: P6484D2  
**Filed:** May 26, 2000    **Inventor:** Shah-Nazaroff et al.

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Derek S. Watson    Date: June 28, 2006



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Included in this transmission:  
Fax Cover Sheet (1 page)  
Transmittal Form (1 page)  
Fee Transmittal (1 page submitted in duplicate)  
Response to Non-Compliant Appeal Brief (1 page)  
Corrected Appeal Brief (25 pages)

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PTO/SB/21 409-04)

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FORM**

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Application Number 09/580,305

Filing Date 05/28/2000

First Named Inventor Shah-Nazaroff, et al.

Art Unit 2614

Examiner Name Ma, Johnny

Attorney Docket Number P6484D2

**ENCLOSURES (Check all that apply)**

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input type="checkbox"/> Information Disclosure Statement<br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/ Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br><input type="checkbox"/> Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences<br><input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):<br>• Response to Non-Compliant Appeal Brief<br>• Facsimile Transmittal |
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Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Intel Corporation		
Signature	/s/Justin B. Scout/Reg. No. 54,431/		
Printed name	Justin B. Scout		
Date	September 5, 2006	Reg. No.	54,431

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Typed or printed name	Derek S. Watson	Date	09/05/2006

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**FEE TRANSMITTAL**  
**For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

**Complete If Known**

Application Number 09/580,305

Filing Date 05/26/2000

First Named Inventor Shah-Nazaroff

Examiner Name Ma, Johnny

Art Unit 2614

Attorney Docket No. P6484D2

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 50-0221 Deposit Account Name: Intel Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☐ Credit any overpayments

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP =	x	=	
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HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP =	x	=	
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Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
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**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 =	/ 50 =	(round up to a whole number) x	=	
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**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge):

Fees Paid (\$)

**SUBMITTED BY**

Signature	/s/Justin B. Scout/Reg. No. 54,431/	Registration No. (Attorney/Agent) 54,431	Telephone 503-264-7002
Name (Print/Type)	Justin B. Scout		Date September 5, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04v2)

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Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

**Complete if Known**

Application Number	09/580,305
Filing Date	05/26/2000
First Named Inventor	Shah-Nazaroff
Examiner Name	Ma, Johnny
Art Unit	2614
Attorney Docket No.	P6484D2

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):☒ Deposit Account Deposit Account Number: 50-0221 Deposit Account Name: Intel Corporation

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☒ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☐ Credit any overpayments

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	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
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Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)

Small Entity Fee (\$)

Each independent claim over 3 (including Reissues)

50

25

Multiple dependent claims

200

100

**Total Claims****Extra Claims****Fee (\$)****Fee Paid (\$)**

- 20 or HP =

x

=

HP = highest number of total claims paid for, if greater than 20.

**Indep. Claims****Extra Claims****Fee (\$)****Fee Paid (\$)**

- 3 or HP =

x

=

HP = highest number of independent claims paid for, if greater than 3.

**Multiple Dependent Claims****Fee (\$)****Fee Paid (\$)****3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

**Total Sheets****Extra Sheets****Number of each additional 50 or fraction thereof****Fee (\$)****Fee Paid (\$)**

- 100 =

/ 50 =

(round up to a whole number) x

=

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

**Fees Paid (\$)**

Other (e.g., late filing surcharge):

**SUBMITTED BY**

Signature	/s/Justin B. Scout/Reg. No. 54,431/	Registration No. (Attorney/Agent)	54,431	Telephone	503-264-7002
Name (Print/Type)	Justin B. Scout			Date	September 5, 2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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SEP 05 2006

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

In re Patent Application of:	)	Examiner:	Ma, Johnny
	)		
Shah-Nazaroff, <i>et al.</i>	)	Art Unit:	2614
	)		
Application No.:	)		
09/580,305	)		
	)		
Filed:	)		
May 26, 2000	)		
	)		
For:	)		
METHOD AND	)		
APPARATUS FOR	)		
ORDERING	)		
ENTERTAINMENT	)		
PROGRAMS FROM	)		
DIFFERENT	)		
PROGRAMMING	)		
TRANSMISSION SOURCES	)		

**RESPONSE TO NON-COMPLIANT APPEAL BRIEF**

Honorable Director of the United States Patent and Trademark Office  
Washington, DC 20231

Sir/Madam:

Appellants hereby submit this amended Brief in support of their Appeal from a final decision by the Examiner in the above-captioned case and in response to the Notification of Non-Compliant Appeal Brief of August 02, 2006.

The original Brief was rejected due to a lack of "a concise explanation of the subject matter". While Applicants respectfully disagree that the original Appeal Brief was non-complaint, Appellants believe that the alleged defects in the original Brief have been corrected and the Brief is now in condition for docketing before the Board. If the Examiner has any questions, they are invited to contact the undersigned at 503-264-7002.

Respectfully submitted,

/Justin B. Scout/  
Justin B. Scout  
Reg. No. 54,431

Dated: September 5, 2006

Intel Corporation  
M/S JF3-147  
2111 NE 25<sup>th</sup> Avenue  
Hillsboro, Oregon 97124  
503-264-7002

Appl. No. 09/580,305

SEP 05 2006

Attorney Docket: 042390.P6484D2

In The United States Patent and Trademark Office  
Before The Board of Patent Appeals and Interferences

In re Patent Application of:	)	Examiner:	Ma, Johnny
	)		
Shah-Nazaroff, <i>et al.</i>	)	Art Unit:	2614
	)		
Application No.: 09/580,305	)		
	)		
Filed: May 26, 2000	)		
	)		
For: METHOD AND	)		
APPARATUS FOR	)		
ORDERING	)		
ENTERTAINMENT	)		
PROGRAMS FROM	)		
DIFFERENT	)		
PROGRAMMING	)		
TRANSMISSION	)		
SOURCES	)		

**APPEAL BRIEF**  
**IN SUPPORT OF APPELLANTS' APPEAL**  
**TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Honorable Director of the United States Patent and Trademark Office  
Washington, DC 20231

Sir/Madam:

Applicants (hereafter "Appellants") hereby submit this Brief in support of their Appeal from a final decision by the Examiner in the above-captioned case. Appellants respectfully request consideration of this Appeal by the Board of Patent Appeals and Interferences for allowance of the claims in the above-captioned patent application.

An oral hearing is not desired.

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

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**1. REAL PARTY IN INTEREST**

The invention is assigned to Intel Corporation of 2200 Mission College Boulevard, Santa Clara, California 95052.

**2. RELATED APPEALS AND INTERFERENCES**

Appellants note that an appeal is pending for a related divisional application, serial number 09/580,681, filed May 26, 2000, entitled "Method And Apparatus For Selecting From Among Multiple Upgraded Media Features For Transmitted Entertainment Programs." This application is also claims the benefit of the priority of prior application serial number 09/183,587, filed October 30, 1998, entitled "Method and Apparatus for Purchasing Upgraded Media Features for Programming Transmissions."

However, Appellants do not believe that the related appeal will directly affect, be directly affected by, or have a bearing on the Board's decision.

**3. STATUS OF THE CLAIMS**

Claims 1-6, 8-16, 18-21, and 23-26 are now pending in the above referenced patent application. Claims 1-6, 8-16, 18-21, and 23-26 were rejected in the Final Office Action mailed on March 02, 2006 and are the subject of this appeal.

**4. STATUS OF THE AMENDMENTS**

No amendments have been filed subject to the Final Rejection.

A copy of all claims on appeal is attached hereto as Appendix A.

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

## **5. SUMMARY OF THE CLAIMED SUBJECT MATTER**

The claimed subject matter provides an improved method and apparatus for purchasing media features for programming transmissions. Information regarding a plurality of different entertainment programs and a plurality of different upgraded media features associated with each entertainment program is received. A list of entertainment programs and, for each entertainment program, a plurality of different upgraded media features are displayed at a user terminal. (See Fig. 5) An entertainment program selection together with one or more upgraded media feature selections from the displayed plurality are transmitted to an entertainment program provider (See Fig. 4, blocks 420 & 430) and the selected entertainment program with the selected upgraded media features is received by the user (See Fig. 4, block 460). In one embodiment, the received and displayed information includes received information regarding costs for each of the plurality of different upgraded media features (See Fig. 5). Specification page 4, lines 2-9.

Figure 1 illustrates one embodiment of the present invention. The present invention allows viewers to purchase upgraded media features. For instance, in one embodiment, a viewer at client system 110 who has ordered a pay-per-view movie can pay an additional fee to receive the movie at a higher video resolution and/or in digital Dolby surround sound rather than monotone audio.

Upgraded media features include, but are not limited to, a wide variety of audio, video, and interactive effects. For instance, video resolution can be upgraded. This is particularly true for digital transmissions, such as broadcasts, from a view-on-demand programming source, such as a broadcast source. A broadcast source may have the option to send multiple broadcasts over a single digital channel simultaneously. For instance, a view-on-demand broadcast source may have access to 200 channels in a particular area, and up to 20 broadcasts may be downloaded

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

simultaneously over each channel. As the number of simultaneous broadcasts increase, the video quality of any one broadcast decreases. So, a viewer could pay more to receive a broadcast over a channel with fewer simultaneous broadcasts.

In one embodiment, a range of upgrades may be available. For instance, a default range of video resolution may be at the lowest possible resolution level, having the maximum number of simultaneous broadcasts on a single channel. A highest range may be at the maximum possible resolution, having a single broadcast on a single channel. Certain televisions, however, may not be able to take full advantage of the highest possible resolution because the televisions cannot resolve that much detail. In which case, one or more middle ranges may be created at approximately the levels of resolution that many types of televisions can display. For each incremental level of resolution, more bandwidth is needed for the broadcast, so the price of each incremental level of resolution may be higher.

Similar approaches can be contemplated and implemented for a variety of upgraded media features from a wide range of broadcast sources. As another example, a viewer may pay for upgraded access to an interactive event. For instance, a real-time three-dimensional virtual gaming environment may be accessed by hundreds of virtual competitors over a network connection such as the Internet, a cable connection, satellite communications, etc. For each competitor, processing bandwidth may be expended providing video and audio, and tracking movements and actions, etc. A gamer may purchase upgraded media features for additional video detail, audio quality, the ability to speak in real time to other gamers, etc. Each incremental level of detail consumes more bandwidth and may have an incrementally higher cost.

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

Another possible upgraded media feature is a pay-per-record feature. For instance, digital television can be transmitted in a view-only format so that a recorded image of the transmission is impaired. In which case, a viewer may buy an upgraded media feature to receive a recordable version of the broadcast.

In the illustrated embodiment of Figure 1, as discussed in more detail below, a viewer at client system 110 selects one or more upgraded media features for a broadcast. The selection is sent to server system 140 over communications media 120. Server system 140 automatically coordinates billing for the upgraded media features, and automatically coordinates providing the upgraded media features from broadcast sources 130. Numerous client systems 110 can be coupled to one or more server systems 140. For instance, server systems 140 may be distributed by region, and a region may include thousands of client systems 110.

Communications media 120 represents a wide range of media. For instance, communications media 120 could include UHF/VHF wireless transmission, twisted pair telephone lines, fiber optic lines, coaxial cable lines such as cable television lines, satellite antenna wireless transmissions, computer network communications such as through the Internet or a wide or local area network, etc. Communications among client system 110, broadcast sources 130, and server system 140 may involve a combination of media within communications media 120. For instance, client system 110 may communicate with server system 140 over the Internet, server system 140 may communicate with broadcast sources 130 over direct telephone lines, and broadcast sources 130 may transmit to client system 110 over satellite antenna transmissions. Numerous additional combinations and alternate connections can be contemplated and used.

Appl. No. 09/580,305

Attorney Docket: 042390.P6484D2

Broadcast sources 130 can include a wide variety of digital and analog audio, video, and interactive sources. For instance, broadcast sources 130 may include local television and radio stations received over a regular antenna, television and radio stations received over a mini-dish satellite antenna, television and radio stations received over a coaxial cable, a number of interactive web sites accessible over the Internet, etc. Broadcasts can also be received from broadcast sources simultaneously. For instance, a viewer may receive an interactive broadcast, such as a game, and an audio broadcast, such as music, at the same time.

Figure 2 illustrates one embodiment of client system 110 in more detail. As discussed below with reference to Figure 6, client system 110 may be an entertainment system including numerous entertainment components. In the illustrated embodiment, the components include user interface 210, program database 220, and tuner interface 230. User interface 210 includes any of a number of output devices such as a display device and/or an audio device to provide a viewer with one or more optional upgrades and a cost for each upgrade for a given broadcast. User interface 210 also includes any of a number of input devices such as a mouse, a track ball, a key pad, a voice recognition unit, etc. The viewer can select from the one or more optional upgrades using an input device. Specification page 6, lines 2 to page 9, lines 4.

Figure 3 illustrates one embodiment of server system 140 in more detail. Server system 140 includes processing server 310 and billing server 320. Processing server 310 receives a selection from client system 110 over communications media 120. The selection indicates one or more upgraded media features for a particular broadcast and a cost for each upgrade. Processing server 310 provides the cost information to billing server 320. With the upgraded media features, processing server 310 places an order to the respective broadcast source or

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Attorney Docket: 042390.P6484D2

sources among broadcast sources 130 to have the upgraded media features provided to the viewer at client system 110. Specification page 9, lines 20 to page 10, lines 4.

Figure 4 demonstrates one embodiment of the present invention. Figure 5 illustrates one embodiment of a display provided by a user interface from which upgraded media features can be selected. Figure 6 illustrates one embodiment of an entertainment system suitable for use with the present invention. Figure 7 illustrates one embodiment of a computing device suitable for use with the present invention. Figure 8 illustrates one embodiment of a computing device suitable for use with the present invention. Specification page 4, lines 18 to page 5, lines 4.

A concise explanation of one embodiment of independent claims 1, 8, 14, and 18 is provided above in relation to Figure 1 and the Specification page 6, lines 2 through page 8, line 18. A concise explanation of one embodiment of independent claim 21 is provided above in relation to Figure 3 and the Specification page 9, lines 20 to page 10, lines 4. A concise explanation of one embodiment of independent claim 23 is provided above in relation to Figure 2 and the Specification page 8, lines 18 through page 9, line 4. A concise explanation of one embodiment of independent claims 25 and 26 is provided above in relation to Figure 1 and the Specification page 6, lines 2 through page 8, line 18. Figure 4 and Specification page 13, lines 6 to 16 may also prove enlightening, but are not needed, to understand the various claims. It is understood that other embodiments of the various claims are discussed in the Specification and that the claimed subject matter is not limited solely to the embodiments discussed within the Specification.

Appl. No. 09/580,305

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**6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

The above referenced patent application has been reviewed in light of the Office Action, dated March 2, 2006, in which:

- claims 1, 2, 8-15, 18-21, 23, 25, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Carrubba *et al.* (hereafter, 'Carrubba,' US Patent No. 5,629,866) in combination with Hjelsvold *et al.* (hereinafter 'Hjelsvold;' US Publication No. 2003/0145333 A1);
- claims 3-6 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Carrubba in combination with Hjelsvold , Wonfer *et al.* (hereinafter 'Wonfer;' US Patent No. 6,381,747, and Ellis *et al.* (hereinafter 'Ellis;' US Patent No. 6,357,043; and
- claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Carrubba in combination with Hjelsvold , and Hendricks *et al.* (hereinafter 'Hendricks;' US Patent No. 5,990,927).

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**7. ARGUMENT****7.1. 35 U.S.C. § 103(a)****7.1.1. Carrubba and Hjelsvold: Claims 1, 2, 8-15, 18-21, 23, 25, and 26**

The PTO has also rejected claims 1, 2, 8-15, 18-21, 23, 25, and 26 under 35 U.S.C. § 103(a) based upon Carrubba in combination with Hjelsvold. The rejection of these claims is respectfully traversed.

M.P.E.P. § 706.02(j) sets forth the standard for a § 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings.

Second, there must be a reasonable expectation of success.

Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (whitespace added).

Appellants begin with claim 1. Claim 1 recites:

1. (Original) A method comprising:  
 receiving a selection to buy an upgraded media feature for a programming transmission;  
 automatically coordinating purchase of the upgraded media feature for the programming transmission; and  
 automatically coordinating provision of the upgraded media feature for the programming transmission.

Appellants respectfully assert that the combination set forth by the PTO fails to meet the requirement for a *prima facie* case for a § 103(a) rejection for at least the following reasons.

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**7.1.1.1 Carrubba does not transmit the program: Program is housed on CD-i disc**

It is respectfully asserted that neither Carrubba nor Hjelsvold, either alone or in combination, suggests or describes receiving a selection to buy an upgraded media feature for a programming transmission. The PTO asserts that Carrubba teaches this limitation. See, Carrubba column 1, lines 52-64. However, it is respectfully asserted that Carrubba does not teach this limitation.

Carrubba instead teaches an upgraded media feature for a program originating on CD-i Player. See Carruba Fig. 1, element 6 and col. 4, lines 13-20. Carruba shows the original program coming from the CD-i player and the complementary programming coming from a data source. A CD-i player is defined as:

CD-i (Compact Disc - interactive) is the multimedia CD format specified in 1986 (in the Green Book). CD-i was specified as an entire system, comprising not just a disc and data format, but a hardware and software system, a variety of special compression methods for audio and visual data, and a method of interleaving audio, video, and text data. Developed as a user-friendly alternative to a PC, CD-I players are easier to use, and have TV video output as well. Full screen motion video capabilities were added to the original specification later.

A CD-i player is a stand-alone system that includes a CPU, memory, and an integrated operating system. It can be connected to a TV set for displaying pictures and sound, or to a stereo system. The user interacts by positioning a cursor and selecting options, with a device such as a specialized remote control.

Although CD-i never realized broad commercial success, it is now used in education, training, and other professional applications.

(from [WhatIs.Com](http://searchstorage.techtarget.com/sDefinition/0,,sid5_gci503661,00.html) on December 18, 2005 at  
[http://searchstorage.techtarget.com/sDefinition/0,,sid5\\_gci503661,00.html](http://searchstorage.techtarget.com/sDefinition/0,,sid5_gci503661,00.html))

In Appellants' claim 1, the original program is a "programming transmission." Carruba's original program is not transmitted. It is housed on a CD-i disc. See Carruba Figs 1, elements s1 & 6. Therefore, it is respectfully asserted that Carruba fails to meet the limitations of the claim for which it is put forth. The PTO does not assert that Hjelsvold ameliorates this deficiency. Therefore, even if the combination were proper, although Appellants believe that it is not,

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nonetheless, the combination would still fail to produce the invention as recited in the rejected claims. It is, therefore, respectfully requested that the rejection of this claim be withdrawn.

### 7.1.1.2 Carrubba does not transmit the program: Carrubba instead transmits “upgraded media feature”

It is respectfully asserted that neither Carrubba nor Hjelsvold, either alone or in combination, suggests or describes receiving a selection to buy an upgraded media feature for a programming transmission. The PTO asserts that Carrubba teaches this limitation. See, Carrubba column 1, line 65 – col 2, line 9. However, it is respectfully asserted that Carrubba does not teach this limitation.

In the March 02, 2006 Office Action, the PTO states that Carruba does show a programming transmission at Carruba col. 1, line 65 – col 2, line 9, which reads (emphasis added):

An embodiment for a system according to the invention is characterized in that the storage medium containing the basic part is located near the merging means and in that the other storage medium containing the complementary part is linked to the merging means via a transmission line of a communications network. The communications network is, for example, the public telephone network. The storage medium containing the complementary part is located, for example, in a data bank controlled by the provider. The complementary part stored in the databank is accessible to a plurality of users of a system according to the invention via the telephone network.

Appellants admit that at first glance the PTO’s arguments seem plausible; however it is respectfully asserted that upon further examination an error is evident. It is respectfully asserted that Carruba shows the “complementary part” being transmitted, not the “basic part”. The “basic part” is stored locally, on the CD-i disc. Appellants’ claim 1 requires that the “basic part” be a “programming transmission”. It is respectfully asserted that what Carruba is transmitting is not the “programming transmission” (i.e. basic part) but instead the “upgraded media feature” (i.e. complementary part) of Appellants claim. The PTO does not assert that Hjelsvold

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ameliorates this deficiency. Therefore, even if the combination were proper, although Appellants believe that it is not, nonetheless, the combination would still fail to produce the invention as recited in the rejected claims. It is, therefore, respectfully requested that the rejection of this claim be withdrawn.

### **7.1.1.3 Conclusion**

Claims 2, 8-15, 18-21, 23, 25, and 26 either depend from and include the limitations of claim 1, or include a substantially similar and patentably distinct limitation as claim 1. Therefore, these claims patentably distinguish from the cited patents on the same basis as claim 1. It is, therefore, respectfully requested that the PTO withdraw the rejections of these claims.

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**7.1.2. Carrubba, Hjelsvold, Wonfer, and Ellis: Claims 3-6 and 16**

The PTO has also rejected claims 3-6 and 16 under 35 U.S.C. § 103(a) on Carrubba in combination with Hjelsvold, Wonfer, and Ellis. The rejection of these claims is also traversed.

Applicant begins with claim 3. Claim 3 recites:

1 3. (Original) The method of claim 1 wherein the automatically coordinating the purchase of the  
2 upgraded media feature comprises:  
3 billing a client for services performed by a server system; and  
4 providing billing information about the client to at least one of a plurality of  
5 programming transmission sources that provided the programming transmission.

Claim 3 ultimately depends from the independent claim 1. Claim 1 recites:

1 1. (Original) A method comprising:  
2 receiving a selection to buy an upgraded media feature for a programming transmission;  
3 automatically coordinating purchase of the upgraded media feature for the programming  
4 transmission; and  
5 automatically coordinating provision of the upgraded media feature for the programming  
6 transmission.

Appellants respectfully assert that the combination set forth by the PTO fails to meet the requirement for a *prima facie* case for a § 103(a) rejection for at least the following reasons.

It is respectfully asserted that neither Carrubba, Hjelsvold, Wonfer, nor Ellis, either alone or in combination, suggests or describes receiving a selection to buy an upgraded media feature for a programming transmission. The PTO asserts that Carrubba teaches this limitation. See, Carrubba column 1, lines 52-64. However, it is respectfully asserted that Carrubba does not teach this limitation. See discussion above. The PTO does not assert that either Hjelsvold, Wonfer, or Ellis ameliorates this deficiency. Therefore, even if the combination were proper, although Appellants believe that it is not, nonetheless, the combination would still fail to produce the invention as recited in the rejected claims. It is, therefore, respectfully requested that the rejection of this claim be withdrawn.

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Claims 4-6 and 16 either depend from and include the limitations of claim 3, or include a substantially similar and patentably distinct limitation as claim 3. Therefore, these claims patentably distinguish from the cited patents on the same basis as claim 3. It is, therefore, respectfully requested that the PTO withdraw the rejections of these claims.

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**7.1.3. Carrubba, Hjelsvold, and Hendricks: Claim 24**

The PTO has also rejected claim 24 under 35 U.S.C. § 103(a) on Carrubba in combination with Hjelsvold and Hendricks. The rejection of this claim is also traversed.

Applicant begins with claim 24. Claim 24 recites:

1        24. (Original) The apparatus of claim 23 wherein the client system comprises:  
 2                an entertainment system to display the programming transmission with the upgraded  
 3        media feature; and  
 4                a user interface to provide a plurality of selection options to a user, said user interface to  
 5        receive the selection from the user.

Claim 24 ultimately depends from the independent claim 23. Claim 23 recites:

1        23. (Original) An apparatus comprising:  
 2                a client system to send a selection to a server system to buy an upgraded media feature  
 3        for a programming transmission, said client system to receive the programming with the upgraded  
 4        media feature.

Appellants respectfully assert that the combination set forth by the PTO fails to meet the requirement for a *prima facie* case for a § 103(a) rejection for at least the following reasons.

It is respectfully asserted that neither Carrubba, Hjelsvold, nor Hendricks, either alone or in combination, suggests or describes buying an upgraded media feature for a programming transmission. The PTO asserts that Carrubba teaches this limitation. See, Carrubba column 1, lines 52-64. However, it is respectfully asserted that Carrubba does not teach this limitation. See discussion above. The PTO does not assert that either Hjelsvold or Hendricks ameliorates this deficiency. Therefore, even if the combination were proper, although Appellants believe that it is not, nonetheless, the combination would still fail to produce the invention as recited in the rejected claims. It is, therefore, respectfully requested that the rejection of this claim be withdrawn.

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## **8. CONCLUSION**

In view of the foregoing, it is respectfully asserted that all claims pending in this application, as amended, are in condition for allowance. If the Examiner has any questions, they are invited to contact the undersigned at 503-264-7002. Reconsideration of this patent application and early allowance of all claims is respectfully requested.

Respectfully submitted,

Dated: September 5, 2006

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**APPENDIX A: CLAIMS APPENDIX**

1 1. (Original) A method comprising:  
2 receiving a selection to buy an upgraded media feature for a programming transmission;  
3 automatically coordinating purchase of the upgraded media feature for the programming  
4 transmission; and  
5 automatically coordinating provision of the upgraded media feature for the programming  
6 transmission.

1 2. (Original) The method of claim 1 wherein the receiving comprises receiving the selection  
2 from an entertainment system, and the programming transmission is provided to the  
3 entertainment system with the upgraded media feature.

1 3. (Original) The method of claim 1 wherein the automatically coordinating the purchase of the  
2 upgraded media feature comprises:  
3 billing a client for services performed by a server system; and  
4 providing billing information about the client to at least one of a plurality of  
5 programming transmission sources that provided the programming transmission.

1 4. (Original) The method of claim 3 wherein the billing is one of performed individually for each  
2 billable transaction and performed according to a billing cycle for at least one billable transaction  
3 during the billing cycle.

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1 5. (Original) The method of claim 1 wherein the automatically coordinating the purchase of the  
2 upgraded media feature comprises:  
3 billing a client for services performed by a server system and at least one of a plurality of  
4 programming transmission sources that provided the programming transmission; and  
5 receiving a bill for the portion of the services performed by the at least one of the  
6 plurality of programming transmission sources at a later time.

1 6. (Original) The method of claim 5 wherein the billing the client and receiving the bill are one  
2 of performed individually for each billable transaction and performed according to a billing cycle  
3 for at least one transaction during the billing cycle.

7. (Cancelled)

1 8. (Original) A method comprising:  
2 sending a selection to a server system to buy an upgraded media feature for a  
3 programming transmission; and  
4 receiving the programming transmission with the upgraded media feature.

1 9. (Original) The method of claim 8 further comprising:  
2 receiving a bill, said bill based at least in part on receiving the upgraded media feature.

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1 10. (Original) The method of claim 9 wherein the receiving the bill comprises a charge to a credit  
2 account at one of the end of a billing cycle and at a time when the upgraded media feature is  
3 received.

1 11. (Original) The method of claim 8 wherein the programming transmission comprises at least  
2 one of a movie, a documentary, an audio production, an interactive media event, a situation  
3 comedy, a news program, and a televised sports event.

1 12. (Original) The method of claim 8 wherein the upgraded media feature comprises at least one  
2 of a video upgrade, an audio upgrade, a recordable version, and an increased access rate for an  
3 interactive event.

1 13. (Original) The method of claim 8 wherein the programming transmission is received from  
2 one of a plurality of programming transmission sources and the plurality of programming  
3 transmission sources include at least one of cable television, antenna reception, satellite  
4 reception, mini-dish satellite reception, telephone dial-up service, and Internet access.

1 14. (Original) A machine readable storage medium having stored thereon machine readable  
2 instructions, execution of said machine readable instructions to implement a method comprising:  
3 receiving a selection to buy an upgraded media feature for a programming transmission;  
4 automatically coordinating purchase of the upgraded media feature for the programming  
5 transmission; and

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6 automatically coordinating provision of the upgraded media feature for the programming  
7 transmission.

1 15. (Original) The machine readable storage medium of claim 14, execution of said machine  
2 readable instructions to further implement:

3 billing a client for services performed by a server system; and  
4 providing billing information about the client to at least one of a plurality of  
5 programming transmission sources that provided the programming transmission.

1 16. (Original) The machine readable storage medium of claim 14 execution of said machine  
2 readable instructions to further implement:

3 billing a client for services performed by a server system and at least one of a plurality of  
4 programming transmission sources that provided the programming transmission; and  
5 receiving a bill for the portion of the services performed by the at least one of the  
6 plurality of programming transmission sources at a later time.

17. (Cancelled)

1 18. (Original) A machine readable storage medium having stored thereon machine readable  
2 instructions, execution of said machine readable instructions to implement a method comprising:

3 sending a selection to a server system to buy an upgraded media feature for a  
4 programming transmission; and  
5 receiving the programming transmission with the upgraded media feature.

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1 19. (Original) The machine readable storage medium of claim 18 execution of said machine

2 readable instructions to further implement:

3 receiving a bill, said bill based at least in part on receiving the upgraded media feature.

1 20. (Original) The machine readable storage medium of claim 19 wherein the receiving the bill

2 comprises a charge to a credit account at one of the end of a billing cycle and at a time when the

3 upgraded media feature is received.

1 21. (Original) An apparatus comprising:

2 a server system to receive a selection to buy an upgraded media feature for a

3 programming transmission, automatically coordinate purchase of the upgraded media feature for

4 the programming transmission, and automatically coordinate provision of the upgraded media

5 feature for the programming transmission.

22. (Cancelled)

1 23. (Original) An apparatus comprising:

2 a client system to send a selection to a server system to buy an upgraded media feature

3 for a programming transmission, said client system to receive the programming with the

4 upgraded media feature.

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1 24. (Original) The apparatus of claim 23 wherein the client system comprises:  
2 an entertainment system to display the programming transmission with the upgraded  
3 media feature; and  
4 a user interface to provide a plurality of selection options to a user, said user interface to  
5 receive the selection from the user.

1 25. (Original) An apparatus comprising:  
2 a receiver to receive a selection to buy an upgraded media feature for a programming  
3 transmission;  
4 a purchasing unit to automatically coordinate purchase of the upgraded media feature for  
5 the programming transmission; and  
6 a provision unit to automatically coordinate provision of the upgraded media feature for  
7 the programming transmission.

1 26. (Original) An apparatus comprising:  
2 a sending unit to send a selection to a server system to buy an upgraded media feature for a  
3 programming transmission; and  
4 a receiving unit to receive the programming transmission.

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**APPENDIX B: EVIDENCE APPENDIX**

To the best of Appellants' knowledge, there is no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision.

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**APPENDIX C: RELATED PROCEEDINGS APPENDIX**

To the best of Appellants' knowledge, there are no appeals or interferences related to the present appeal that will directly affect, be directly affected by, or have a bearing on the Board's decision.

Appellants note that an appeal is pending for a related divisional application, serial number 09/580,681, filed May 26, 2000, entitled "Method And Apparatus For Selecting From Among Multiple Upgraded Media Features For Transmitted Entertainment Programs." This application is also claims the benefit of the priority of prior application serial number 09/183,587, filed October 30, 1998, entitled "Method and Apparatus for Purchasing Upgraded Media Features for Programming Transmissions." However, Appellants do not believe that the related appeal will directly affect, be directly affected by, or have a bearing on the Board's decision.